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6 UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 OAKLAND DIVISION
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10 RODOLFO VELASQUEZ,

11 Plaintiff,

12 vs.

13 BANK OF AMERICA N.A., LTD
14 FINANCIAL SERVICES, L.P.,

15 Defendants.

Case No: C 11-2491 SBA

ORDER

Docket 5, 6

16
17 On May 23, 2011, pro se Plaintiff Rodolfo Velasquez (“Plaintiff”) filed the instant
18 mortgage fraud action against Defendants, asserting sixteen causes of action, including
19 violations of the Truth in Lending Act, 15 U.S.C. § 1601, and the Real Estate Settlement
20 Act, 12 U.S.C. § 2601. On June 15, 2011, Defendant Bank of America, N.A.
21 (“Defendant”) filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) and
22 a motion to strike under Rule 12(f). Docket 5,6. Plaintiff did not oppose the motions.
23 Instead, on September 20, 2011, Plaintiff filed an amended complaint. Dkt. 16. On
24 October 14, 2011, Defendant filed a motion to strike Plaintiff’s amended complaint because
25 he did not obtain leave of court to file it. Dkt. 21.

26 Under Federal Rule of Civil Procedure 15(a), a plaintiff has a right as a matter of
27 course to amend the complaint within twenty-one (21) days from the date that a Rule 12(b)
28 motion is filed. Fed.R.Civ.P. 15(a)(1); Joern v. Ocwen Loan Serv., LLC, CV-10-0134,

2010 WL 2813769, *2 (E.D. Wash. 2010) (stating that Rule 15(a) provides a plaintiff with the opportunity to file an amended complaint within twenty-one (21) days after a Rule 12(b) motion is filed). If this time period has passed, then plaintiff may only amend the complaint with the opposing party's written consent or the court's leave. Fed.R.Civ.P. 15(a)(2). Leave shall be freely granted by the court. Id.

Defendant is correct that Plaintiff has improperly filed his amended complaint because he did so outside the 21-day window in Rule 15(a) to amend as a matter of course, and otherwise did not obtain Defendant's consent or the Court's permission to file the amended complaint. However, the Court notes the Ninth Circuit's generous standard for granting motions for leave to amend under Rule 15, and its policy of favoring amendments with "extreme liberality." United States v. Webb, 655 F.2d 977, 979 (9th Cir. 1981). Furthermore, the Court notes the standard of liberally construing pro se litigants pleadings. Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988). In light of these standards, the Court is not inclined to grant Defendant's motion to strike the amended complaint, but will instead require Plaintiff to move to amend the complaint and provide Defendant with an opportunity to oppose, assuming the two are not able to resolve this matter without the Court's intervention after meeting and conferring. Accordingly,

IT IS HEREBY ORDERED THAT:

1. Within ten (10) days of the date this Order is filed, the parties shall meet and confer to determine whether the parties are able to file a stipulation pursuant to Federal Rule of Civil Procedure 15(a) permitting Plaintiff to file his amended complaint. The parties are directed to keep in mind the liberal pleading standards applicable to Rule 15 motions when meeting and conferring. If the parties agree that Plaintiff may file an amended complaint, Defendant shall file a stipulation with the Court within ten (10) days of the date this Order is filed.

2. If the parties are not able to agree that Plaintiff may file an amended complaint, then within thirty (30) days from the date this Order is filed, Plaintiff shall file a motion for leave to amend his complaint under Federal Rule of Civil Procedure 15, which

1 shall be heard with Defendant's motion to strike Plaintiff's amended complaint on March 6,
2 2012 at 1:00 p.m.

3 3. Within forty-five (45) days from the date this Order is filed, Defendant shall
4 file an opposition or statement of non-opposition to Plaintiff's motion for leave to amend
5 the complaint and Plaintiff shall file an opposition or statement of non-opposition to
6 Defendant's motion to strike the amended complaint.

7 4. Within fifty-five (55) days from the date this Order is filed, Plaintiff shall file
8 a reply, if any, with regard to his motion for leave to file an amended complaint, and
9 Defendant shall file a reply, if any, with regard to its motion to strike Plaintiff's amended
10 complaint.

11 5. This Order terminates Docket 5, 6.

12 IT IS SO ORDERED.

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14
15 Dated: October 17, 2011



SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 RODOLFO VELASQUEZ,

5 Plaintiff,

6 v.

7 BANK OF AMERICA et al,

8 Defendant.
9 _____/

Case Number: CV11-02491 SBA

10 **CERTIFICATE OF SERVICE**

11
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on October 18, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Rodolfo Velasquez
19 426 Idora Avenue
20 Vallejo, CA 94591

21 Dated: October 18, 2011

Richard W. Wieking, Clerk

22 By: LISA R CLARK, Deputy Clerk
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